

VZCZCXRO7924
RR RUEHAG RUEHDF RUEHLZ
DE RUEHRL #0390/01 0571633
ZNR UUUUU ZZH
R 261633Z FEB 07
FM AMEMBASSY BERLIN
TO RUEHC/SECSTATE WASHDC 7233
INFO RUCNFRG/FRG COLLECTIVE

UNCLAS SECTION 01 OF 03 BERLIN 000390

SIPDIS

SENSITIVE
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DEPT FOR EUR/AGS, EUR/PGI, DRL/IL, G/TIP, INL/HSTC, AND PRM

E.O. 12958: N/A

TAGS: [KCRM](#) [PHUM](#) [KWMN](#) [ELAB](#) [SMIG](#) [ASEC](#) [PGOV](#) [GM](#)

SUBJECT: GERMAN FAMILY MINISTRY RELEASES EVALUATION OF 2002
LAW ON STATUS OF PROSTITUTION

REF: A. 06 BERLIN 1504

[1](#)B. 06 BERLIN 2465

[1](#)1. (U) Summary: German legislation enacted in 2002 to improve the legal and social situation of prostitutes -- and create conditions for them to get out of prostitution -- has enjoyed only partial success, according to a 200-plus page Family Ministry report released in late January. The report states legal provisions giving prostitutes the right to enforce contracts and to apply for health insurance and social benefits are rarely used. The report concludes the 2002 legislation did not diminish police authority to conduct snap inspections of brothels. Nor, according to the report, did the 2002 law obstruct law enforcement efforts against trafficking or exploitation of prostitutes, notwithstanding some groups' claims to the contrary. The report recommends additional measures to improve the situation of prostitutes; greater emphasis on helping prostitutes get out of prostitution; increased education of clients; and improvements in protection programs for trafficking victims. The report also advocates passage of legislation to criminalize the actions of clients who knowingly patronize trafficking victims. End Summary.

"Getting Out is the Goal"

[1](#)2. (U) Under the motto "Prostitution is not an occupation like others -- Getting out is the goal," Federal Family Minister Ursula von der Leyen on January 24 presented the results of the Family Ministry's review of 2002 legislation on the legal status of prostitution in Germany. Although the legislation was intended to improve the legal and social situation of prostitutes, von der Leyen said, it has thus far only been a partial success. She stressed the German government does not consider prostitution to be a suitable form of employment and noted the ministry's primary goal is to help individuals get out of prostitution.

[1](#)3. (SBU) The report concludes the 2002 law achieved its goal of establishing a legal framework to improve the situation of prostitutes, but in practice little use was made of these new tools. Fears that the law would make it more difficult to investigate trafficking crimes were not realized. Von der Leyen stated the government must continue to improve legal protections for prostitutes and to create conditions for them to find alternative employment. In a January 31 letter to the Ambassador, von der Leyen expressed appreciation for the Embassy's continued engagement on TIP and reiterated the German government's commitment from the top down to help prostitutes find alternatives. She confirmed government support for draft legislation now before parliament that would criminalize clients who patronize trafficking victims

(ref A).

Background

¶4. (U) Before 2002, Section 180(a) of the German penal code criminalized the actions of persons who (informal Embassy translation) "professionally maintain or manage an operation in which persons engage in prostitution and in which: (1) those persons are held in personal or financial dependency; or (2) the exercise of prostitution is promoted by measures which go beyond merely furnishing a dwelling, a place to stay, or a residence and the additional services normally associated therewith." Legislation the Schroeder-led coalition passed in 2002 eliminated the second subsection. Justice Ministry officials report that, before 2002, steps such as providing hygienic working conditions were construed as promoting prostitution.

¶5. (U) The 2002 legislation gave prostitutes the legal right to enforce contracts for sexual services and access to health insurance, social security benefits, and, unemployment benefits. (NOTE: The 2002 legislation did not legalize prostitution in Germany. Prostitution has been legal throughout Germany since the nineteenth century. In practice most municipalities use local zoning laws to restrict prostitution to certain areas and times. END NOTE.) The 2002 law narrowed the criminal offense of pimping -- Section 181(a) -- to "impairing the personal or economic independence of another person by facilitating that person's engagement in prostitution." The 2002 legislation did not affect existing criminal provisions penalizing trafficking of persons.

¶6. (U) The 2002 law required the Family Ministry to complete

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an evaluation of the effects of the penal code amendments within five years. The evaluation is based in part on a series of studies conducted by a Lutheran research institute at the ministry's request. The study examined the 2002 legislation's effect on wider law enforcement efforts and on government programs designed to protect prostitutes and help them find alternative employment. The 200-plus page evaluation also includes legal opinions prepared by a law professor and the research used to prepare the Federal Office of Criminal Investigation's (BKA) 2006 report evaluating German efforts against TIP.

The German Government Position: Underlying Principles

¶7. (U) The German government's position on legalized prostitution, as outlined in the report, is based on the idea that an individual's voluntarily decision to work as a prostitute must be regarded as an expression of self-determination. While asserting that voluntary prostitution does not automatically violate human dignity, the report also acknowledges prostitution is often physically and psychologically dangerous. Furthermore, the report states, it is appropriate to question whether many prostitutes -- some of whom it notes are under duress -- have actually made an informed and voluntary decision. The report states a primary goal of the German Federal Government's policy is to help persons working as prostitutes find a way out.

¶8. (U) According to the report, it is imperative for government-funded support organizations -- along with federal and state government policies on education and labor -- to promote alternatives. The report states the risks connected with prostitution are best countered by bringing prostitution into the open. Banning prostitution, the report argues, effectively drives the practice underground. Legalized prostitution permits the government to have more control over

the conditions in which prostitution is practiced. The report also states it is society's responsibility to address the problematic effects of commercialized sex and to sensitize clients to their responsibilities in the matter.

Report Card

¶9. (SBU) The report evaluates the success of the 2002 legislation in achieving its goals in the following areas:

-- Legal Recourse: Few prostitutes to date have made use of a provision allowing them to sue clients. Nonetheless, the report states, the legislative change should be considered a success because it removed an injustice against prostitutes and strengthened their legal position.

-- Employment Contracts: The 2002 legislation narrowed the definition of the criminal promotion of prostitution (para 4) to permit brothel owners to offer prostitutes employment contracts and to make employer contributions to social security and health insurance plans. The report found only one percent of prostitutes interviewed had signed an employment contract, primarily because the prostitutes did not consider it a financially attractive option.

-- Social Benefits: While researchers did not have sufficient statistical data to determine whether the number of insured prostitutes increased since enactment of the law, they did find that 87 percent of prostitutes interviewed have health insurance. Most, however, receive health insurance as a dependent on a family member's health plan or through another job. While the legislation increased access to social security benefits, in practice the option was rarely pursued.

-- Working Conditions: Although an expressed goal of the law was to improve prostitutes' working conditions, the research showed brothel owners had done little to do so. The report recommends increasing penalties for apartment owners who exploit prostitutes. (NOTE: A separate statute criminalizes trafficking in persons. END NOTE.)

-- Employment Agencies: The report confirmed what German government officials have told us -- the 2002 legislation has not caused employment agencies to offer job seekers employment as prostitutes. At the same time, the report states, prostitutes who want to get out of prostitution can use the placement services of government-run employment

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agencies to find alternative jobs (ref B).

-- Alternatives to Prostitution: The report notes a number of government-funded counseling centers exist to help prostitutes get out of prostitution, but recommends the services be further expanded. The report calls on the government to develop assistance models that can be used nationwide. The report highlights "ProFridA," a two-year project established in 2006 by the Lutheran Church and funded by the state of North Rhine - Westphalia and the European Social Fund that offers prostitutes three months of basic training followed by sector-specific training and job placement assistance. (NOTE: Family Ministry officials continue to tell us the ministry has urged German states to support projects to help prostitutes find alternate employment. END NOTE.)

Law Enforcement Implications

¶10. (SBU) Although the 2002 legislation removed police authority to use the statute criminalizing the promotion of prostitution to conduct raids on commercial sex venues, the

report states, police continue to use other criminal and legal-administrative violations to conduct surveillance and raids. The majority of police questioned by researchers did not report any negative effect of the 2002 penal code amendments. The report suggested federal and state governments develop additional administrative control measures under the commercial code. (NOTE: Prosecutors and police tell us the 2002 legislation has not had a significant effect on their efforts against TIP. The key factor, they say, is a significant police presence and sufficient resources to conduct investigations. END NOTE.)

The Report's Recommendations

¶11. (U) The government will use the report to review how government programs can better support those who want to get out of prostitution. The report recommends the following measures:

-- Develop a broader concept of regulating prostitution to integrate anti-trafficking measures with efforts that protect prostitutes from violence and exploitation. The report notes government-sponsored legislation to criminalize the actions of clients who knowingly engage the services of trafficking victims is under consideration in the German Parliament.

-- Strengthen the penal code to increase the protection of juveniles forced to work as prostitutes. Under current criminal law, brothel owners, pimps, and others who promote the prostitution of persons under the age of 18 can be prosecuted for their actions, but clients who patronize prostitutes who are younger than 18 (but older than 16 -- the age of legal consent) cannot be prosecuted. The report notes the government has submitted legislation to parliament that would criminalize the actions of clients who patronize prostitutes younger than 18 years of age.

-- Increase penalties for brothel owners and operators who exploit prostitutes.

-- Amend the commercial code to enable municipal authorities to use zoning laws and regulations to improve working conditions for prostitutes. States should consider legislation that would require brothels to show demonstrated and sustained compliance with laws that prohibit trafficking and exploitation of prostitutes, as well as regulations on working conditions and benefits, in order to obtain licenses.

-- Continue overseeing employment agencies to ensure they do not offer job seekers employment in the commercial sex industry.

TIMKEN JR